

#### **IV. REMARKS**

##### **Status of the Claims**

Claim 1 is amended to clarify the nature of the engagement between the locking elements and the cellphone. Claims 1-10 remain under consideration.

##### **Summary of the Office Action**

Claims 1 stands rejected under 35USC102(b) on the basis of the cited reference Humphreys, U.S. Patent No. 5,825,874. Claims 1-10 stand rejected under 35USC102(b) on the basis of the cited reference Wijas, U.S. Patent No. 5,463,688. The Examiner is respectfully requested to reconsider his rejection in view of the following remarks.

In response to the Examiner's objections, section headings have been inserted into the specification at the suitable locations.

##### **The Invention**

A cellphone holder for securing a cellphone is constructed having locking elements with clamping surfaces that press against the side surfaces of the phone. The clamping surfaces are made of a soft rubber-like material having a large friction coefficient against the shell material of the phone. The phone is locked in the holder by pushing it lightly against locking surfaces at the bottom of the holder. The locking mechanism in the holder will then pivot the clamping surfaces closely against the side surfaces of the phone. The phone is released from the holder by pushing two release buttons, whereby the clamping surfaces are forced to open to release the side surfaces of the phone. In this manner the holder secures the cellphone without the need for elements that mechanically engage the cellphone in an interlocking relation which requires customized engagement slots or surfaces on the cellphone. Accordingly, the holder need not

be custom designed to fit the size and shape of a particular cellphone and the cell phone need not be constructed to provide the required interlocking elements for the holder. In the holder of this invention a wide variety of cellphone shapes and sizes can be secured without customization.

#### **Discussion of the Cited References**

U.S. Patent No. 5,825,874 discloses a holder into which a phone is inserted in a movement along the longitudinal axis of the cellphone. On both sides of the holder there are clamping elements that lock into notches on the cellphone body. The grip of the said clamping elements on the cellphone body is released by a mechanism comprising a spring, bearing and a pin. When buttons belonging to the said mechanism that project outward from the holder are pushed, the locking mechanism gripping the sides of the cellphone is released and the phone can be removed from the holder. However, the solution disclosed requires that each phone size must have a holder of its own and, furthermore, suitably sized notches have to be made in the cellphone body for the locking element.

The Examiner has also based his anticipation rejection on the cited reference Wijas. This reference describes a holder for a telephone which is similar to that described in the '874 described above. Referring to column 8, lines 17-25 and again at column 8, lines 31-40, it is observed that the telephone is held within the holder by means of latching surfaces 132 and 142 fitting into notches 404. Additionally toe prongs 440 and 450 are molded to fit aligned rear notches 405. Again this requires a customized holder to fit a specific phone.

### The Issue of Anticipation

It is well settled that a claim is anticipated, "only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." (See CHISOLM, Federal Circuit Guide, Pg. 1221).

"...it must be shown that the reference contains all of the elements of the claims apart from irrelevant or merely extraneous variations, and the elements are arranged in the same way to achieve the same result which is asserted to be an inventive function..." 454 U.S. 1129 (1981)

The elements of the claim and their function and purpose within the claim must be reviewed in a manner similar to an infringement analysis. If the device described in the cited reference would not infringe if it was later, it will not anticipate if the reference is earlier.

Applying this standard to the device of the references Humphreys and Wijas, it becomes clear that these references are missing significant elements of independent claim 1. There is no provision in the devices of the cited references for securing the cellphone solely by the frictional engagement of clamping surfaces. Claim 1 states:

**"the locking mechanism comprising two L-shaped locking elements having flat surfaces for clamping the cellphone solely by means of friction between the locking elements and the shell of the cellphone."**

Since this element forms no part of the devices of Humphreys or Wijas, there would be no infringement if they were later, therefore, the cited references do not support the rejection by

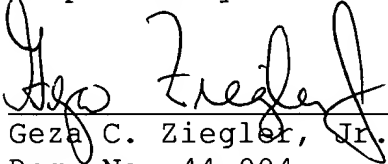
the Examiner based on anticipation.

The above arguments are equally applicable to the rejected dependent claims 2-10.

In view of the remarks stated above, Applicant submits that all of the claims under consideration contain patentable subject matter and favorable action by the Examiner is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

The Commissioner is hereby authorized to charge payment for any fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,

  
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